IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL Nos. 2665 to 2669 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE J.M.PANCHAL

THE HON'BLE SMT. JUSTICE ABHILASHA KUMARI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SPL.LAQ OFFICER - Appellant(s)

Versus

JIVABHAI SONDABHAI & 1 - Defendant(s)

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Appearance :
Ms.Krina P.Calla,learned AGP for Appellant(s) : 1,
MR DEVENDRA A PATEL for Defendant(s) : 1,
None for Defendant(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE J.M.PANCHAL

and

THE HON'BLE SMT. JUSTICE ABHILASHA KUMARI

Date : 16/01/2007

COMMON ORAL JUDGMENT

(Per : HONOURABLE SMT.JUSTICE ABHILASHA KUMARI)

1. These appeals filed under Section 54 of the Land Acquisition Act, 1894 (“the Act” for short) read with Section 96 of the Code of Civil Procedure, 1908 are directed against the common judgment and award dated October 20,2004 rendered by the learned Civil Judge(S.D.), Surendranagar in Land Reference Case Nos. 364/97 to 369/97 by which the claimants are awarded additional amount of compensation at the rate of Rs. 15.02 paise per Sq.Mtr. for irrigated lands and Rs. 5.35 paise per Sq.Mtr. for non-irrigated lands, over and above the compensation awarded to them by the Special Land Acquisition Officer at the rate of Rs.0.97 paise per Sq.Mtr. for irrigated lands and Rs.0.65 paise per Sq.Mtr. for non-irrigated lands by his award dated November 3,1995.

2. The Executive Engineer, Narmada Project, Unit No.11, Saurashtra Branch, Surendranagar proposed to the State Government to acquire lands of Village – Vithalgadh, Taluka – Lakhtar, District- Surendranagar for the public purpose of construction of Lakhtar Branch Canal under the Narmada Project. On scrutiny

of the said proposal, the State Government was satisfied that the lands of Village – Vithalgadh mentioned in the said proposal were likely to be needed for the said public purpose. Therefore, a Notification under Section 4(1) of the Act was issued which was published in the Official Gazette on September 3,1992. The land owners were thereafter served with the notices under Section 4 of the Act. On receipt of the notices, they opposed the proposed acquisition. After considering their objections, a report as contemplated by Section 5A(2) of the Act was forwarded by the Special Land Acquisition Officer to the State Government. On perusal of the said report, the State Government was satisfied that the lands of Village –Vithalgadh which were specified in the Notification published under Section 4(1) of the Act were needed for the public purpose of construction of the Lakhtar Branch Canal under the Narmada Project. Therefore, a declaration under Section 6 of the Act was made which was published in the Official Gazette on October 12,1993. The interested persons were thereafter served with the notices for determination of the compensation payable

to them. The claimants appeared before the Special Land Acquisition Officer and claimed compensation at the rate of Rs. 75/- per Sq.Mtr. However, having regard to the materials placed before him, the Special Land Acquisition Officer by his award dated November 3,1995 offered compensation to the claimants at the rate of Rs.0.97 paise per Sq.Mtr. for irrigated lands and Rs. 0.65 paise per Sq.Mtr. for non-irrigated lands. The claimants were of the opinion that the offer of compensation made by the Special Land Acquisition Officer was totally inadequate. Therefore, they submitted applications under Section 18 of the Act requiring the Special Land Acquisition Officer to refer their cases to the Court for the purpose of determination of just amount of compensation payable to them. Accordingly references were made to the District Court, Surendranagar, where they were registered as Land Reference Case Nos. 364/97 to 369/97.

3. On behalf of the claimants witness Jivabhai Sondabhai was examined at Exh.25. He claimed before the Reference Court that his village – Vithalgadh was

fairly developed though the main occupation of the residents of the village was agriculture. According to the witness, the lands acquired were situated on Surendrangar-Ahmedabad State Highway and that Chhabli Railway Station was situated at a distance of 2 Kms. from the acquired lands. The witness maintained before the Court that each claimant was able to raise crops of millet and cotton during rainy season whereas in summer each claimant was able to raise crop of Juvar, millet and cumin seeds. The witness mentioned that the quantity of cumin seeds grown was about 10 to 12 Maunds per Vigha per year whereas quantity of cotton grown was 25 to 30 Maunds per Vigha per year. According to this witness, each claimant was selling his agricultural produces in the market. The witness asserted that the price of cumin seeds was between Rs.1000/ to Rs.2000/- per 20 Kgs. whereas that of cotton was Rs.400/- to Rs.500/- per 20 Kgs. The witness asserted that after deducting the cost of cultivation, each claimant was earning net income of Rs.30,000/- to Rs.35,000/- per year per Vigha from the sale of different agricultural produces.

4. In cross-examination on behalf of the Land Acquisition Officer, the witness stated that his yearly household expenditure was Rs.30,000/- and that he was able to meet the same from the income derived from the sale of agricultural produces. It was further mentioned by the witness in his cross-examination that during the drought it was not possible to raise crops on the lands acquired. The witness also stated that the price of the agricultural produces at the relevant time could have been obtained from the Agricultural Produce Market Committee but he had not obtained the same nor he was aware as to what where the prices of agricultural produces in the year 1992. In cross-examination on behalf of the acquiring body, it was stated by the witness that he was ready to produce bills indicating purchase of insecticides etc., which were used for the purpose of cultivation.

5. On behalf of the acquiring authorities witness Rajendra Nanalal Patel, who was then Deputy Executive Engineer in Sardar Sarovar Narmada Nigam, was

examined at Exhibit-43. The witness maintained before the Court that all relevant factors were taken into consideration by the Special Land Acquisition Officer before determining the amount of compensation payable to the claimants and, therefore, the claimants were not entitled to enhanced compensation. In cross-examination by the learned advocate for the claimants, it was stated by the witness that he had not passed the award relating to the lands acquired nor he had personal knowledge about the acquisition proceedings. The suggestion made to the witness that village Vithalgadh was situated on State Highway was accepted by him.

6. On appreciation of the evidence adduced by the parties, the Reference Court noticed that the enhanced compensation was not claimed by the claimants either on the basis of comparable sale instances or on the basis of expert evidence. The Reference Court held that the record of Rights produced indicated that the claimants used to take one or two crops in a year as the lands, which were subject matter of Land Reference Case Nos.364/97 to

368/97, were irrigated, whereas the land involved in Land Reference Case No.369/97 was non-irrigated land. In the ultimate analysis, the Reference Court deduced that each claimant was able to get gross income of Rs.5125/- per year per Vigha. The Reference Court deducted 50% towards cost of cultivation from the said figure and held that the net amount of income earned by each claimant was Rs.2562.05 Ps. per year per Vigha. After ascertaining the price of the land per Hector at Rs.16015/-, the learned Judge applied multiplier of 10 years' purchase to the said figure and held that the net income was Rs.1,60,156/ per Hector. The Reference Court further rounded up the said figure to Rs.1,60,000/- per Hector and held that the claimants were entitled to additional amount of compensation at the rate of Rs.15.02 Ps. per sq.mtr. for irrigated lands and Rs.5.35 Ps.per sq.mts. for non-irrigated lands by the impugned award, giving rise to the instant appeals.

7. This Court has heard Ms.Krina P.Calla, learned Assistant Government Pleader for the appellant and Mr.Devendra Patel, learned Counsel for the claimants.

This Court has also considered the evidence adduced by the parties before the Reference Court.

8. It is well settled that the function of the Court in awarding compensation under the Act is to ascertain the market value of the land at the date of the notification issued under Section 4(1) of the Act. The methods of valuation are: (i) opinion of experts: (ii) the prices paid within a reasonable time in bona fide transactions of purchase or sale of the lands acquired or of the lands adjacent to those acquired and possessing similar advantages; and (iii) a number of years' purchase of the actual or immediately prospective profits of the lands acquired. Normally, the method of capitalising the actual or immediately prospective profits or the rent of a number of years' purchase should not be resorted to, if there is evidence of comparable sales or other evidence for computation of the market value. It can be resorted to only when no other method is

available. Where definite material is not forthcoming either in the shape of sales of similar lands in the neighbourhood at or about the date of notification under Section 4(1) or otherwise, the Court has no other alternative but to fall back on the method of valuation by capitalisation. Here in this case, the claimants did not rely upon expert evidence nor relied upon the sale instances for the purpose of claiming enhanced compensation and, therefore, this Court is of the opinion that the Reference Court was justified in determining the market value of the lands acquired on yield basis. In valuing land or an interest in land for purposes of land acquisition proceedings, the rule as to number of years' purchase is not a theoretical or legal rule but depends upon economic factors such as the prevailing rate of interest in investing money etc. It is fairly established by judicial pronouncements that a person investing his capital in agricultural lands would ordinarily expect a return of 2 percent to 3 percent more

than what he could obtain from gilt-edged securities or other forms of safe investments. The fluctuations in price of agricultural produce introduce a great deal of uncertainty in regard to the income that can be expected from the sale of the produce and therefore, while adopting capitalisation method, the Courts should adopt multiplier of 10 to arrive at the market value of the lands acquired.

9. Having noticed the relevant principles which govern the determination of the market value of the lands acquired on yield basis, this Court has considered the submissions advanced at the Bar and the evidence adduced by the parties. After reading the oral testimony of the witnesses and going through the documents, the learned Counsel for the parties have agreed that for the purpose of determining the market value of the lands acquired in the instant case on yield basis, the Court should take into consideration the income derived by the claimants from the sale of only

one crop, namely, cotton. It may be mentioned that though no satisfactory evidence has been led by the claimants regarding the quantity of cotton grown on the lands acquired, this court is of the opinion that on the said ground, the claimants should not be non-suited in view of the decision in **State of Gujarat and others v. Rama Rana and others, (1997)2 SCC 693.** The evidence adduced by the claimants will have to be subjected to close scrutiny. Though it was claimed by the witness for the claimants that each claimant was able to raise crop of 20 Maunds to 30 Maunds of cotton per Vigha per year, this Court is of the opinion that the assertion that each claimant was able to raise 30 Maunds of cotton is full of exaggeration and as suggested by the learned counsels for the parties, it would be reasonable to hold that each claimant was able to raise 20 Maunds of cotton per Vigha per year. The record would show that the price of cotton at the relevant time was Rs.300/- per Maund which means that each claimants was able to get income of

Rs.6000/- per year per Vigha from the sale of cotton. As per the settled law, 50% from the said amount will have to be deducted towards the cost of cultivation, which would bring the figure to Rs.3000/- In catena of reported decisions, the Supreme Court has held that while determining the market value of the lands acquired on yield basis, multiplier of 10 should be adopted by the Court. If multiplier of 10 is adopted, then it would indicate that the net income from the sale of cotton earned by each claimant was Rs.30,000/- per year per Vigha. In order to determine the price of the lands per sq.mtr., the said figure will have to be divided by 2350 and if it is so divided, it becomes evident that the price of the lands acquired at the relevant time was Rs.12.76 Ps. per sq.mtr., which is rounded up to Rs.13/- per sq.mt. for convenience. Therefore, the appeals will have to be allowed in part.

10. For the foregoing reasons, all the appeals partly succeed. The common judgment and award dated October 20,2004 rendered by the Civil Judge(S.D.), Surendranagar in Land Reference Case Nos. 364/97 to

368/97 awarding additional amount of compensation to the claimants at the rate of Rs.15.02 Ps. per Sq.Mtr. for irrigated lands and Rs.5.35 paise per Sq.Mtr. for non-irrigated lands, over and above the compensation awarded to them by the Special Land Acquisition Officer at the rate of Rs.0.97 Ps.per sq.mtr. for irrigated land and Rs.0.65 P. per sq.mtr. for non-irrigated land by his award dated November 3,1995 is hereby modified and it is held that the claimants in all would be entitled to compensation at the rate of Rs.13/- per Sq.Mtr. for the lands acquired, which are subject of Land Reference Case Nos.364/97 to 368/97. The other benefits granted to the claimants by the impugned award are not interfered with at all and are hereby confirmed. The appeals are allowed to the extent indicated herein-above. There shall be no orders as to costs. The Registry is directed to draw the decree in terms of this judgment.

11. It may be mentioned that First Appeal No.2670/2006 arising out of Land Reference Case No.369/97, is not decided alongwith these appeals because it stands on a different footing and on

different evidence. Therefore, it is clarified that the judgment rendered in these appeals would not govern the First Appeal No.2670/2006, which will have to be decided on its own merits.

(J.M.Panchal,J)

(Smt.Abhilasha Kumari,J)

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